

107TH CONGRESS
2D SESSION

H. R. 5309

To authorize the Regional Foresters to exempt tree-thinning projects, which are necessary to prevent the occurrence of wildfire likely to cause extreme harm to the forest ecosystem, from laws that give rise to legal causes of action that delay or prevent such projects.

IN THE HOUSE OF REPRESENTATIVES

JULY 26, 2002

Mr. SHADEGG (for himself, Mr. HANSEN, Mr. MCINNIS, Mr. FLAKE, Mr. SCHAFER, Mr. GIBBONS, Mr. HERGER, Mrs. CUBIN, Mr. KINGSTON, Mr. HOEKSTRA, Mr. DOOLITTLE, Mr. HEFLEY, Mr. TANCREDO, Mr. DEMINT, Mr. BRYANT, Mr. PETERSON of Pennsylvania, Mr. HAYWORTH, and Mr. CANNON) introduced the following bill; which was referred to the Committee on Agriculture, and in addition to the Committee on Resources, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To authorize the Regional Foresters to exempt tree-thinning projects, which are necessary to prevent the occurrence of wildfire likely to cause extreme harm to the forest ecosystem, from laws that give rise to legal causes of action that delay or prevent such projects.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Wildfire Prevention
3 and Forest Health Protection Act of 2002”.

4 **SEC. 2. FINDINGS.**

5 Congress finds the following:

6 (1) National Forest System lands in the United
7 States are in poor ecological health and in grave
8 danger of catastrophic wildfires because of high fuel
9 loads.

10 (2) The poor condition of these National Forest
11 System lands is evidenced by the fact that, in the
12 first seven months of 2002, 51,669 wildfires have
13 devastated over 3,800,000 forested acres, including
14 999,000 acres in Alaska, 628,000 acres in Arizona,
15 378,000 acres in Colorado, 298,000 acres in New
16 Mexico, 290,000 acres in Oregon, 229,000 in acres
17 in Utah, and 169,000 acres in California.

18 (3) It has been scientifically established that re-
19 ducing fuel loads by thinning trees improves forest
20 ecological health and reduces the risk of catastrophic
21 crown fires.

22 (4) Trees damaged by fire are more susceptible
23 to insect infestation than healthy undamaged trees,
24 and experts agree that fire damaged trees must be
25 removed to improve forest health and that such re-
26 moval must occur within six to twelve months if the

1 fire damaged trees are to have any commercial
2 value.

3 (5) Under current Federal law, forest manage-
4 ment projects designed to reduce fuel loads are sub-
5 ject to challenge and appeal by groups and individ-
6 uals.

7 (6) In a report issued in July 2002, the Forest
8 Service found that 48 percent of projects involving
9 mechanical tree thinning on National Forest System
10 lands have been subject to challenge and appeal and
11 that the extra decision-making analysis forced by
12 these appeals “added significantly to time required
13 but did not materially improve the proposed action”.

14 (7) The Forest Service further found that “In
15 spite of the agency’s best efforts, individuals or or-
16 ganizations opposed to the projects filed appeals
17 and/or filed suit to stop the projects.”.

18 (8) Use of existing administrative and legal
19 processes to address the fire danger in the United
20 States will not enable the Forest Service to take the
21 immediate action necessary to reduce fuel loads to
22 both improve forest ecological health and prevent the
23 occurrence of wildfires likely to cause extreme harm
24 to the forest ecosystem.

1 **SEC. 3. REGIONAL FORESTER AUTHORITY TO EXEMPT**
2 **WILDFIRE PREVENTION TREE-THINNING**
3 **PROJECTS FROM CERTAIN LAWS.**

4 (a) EXEMPTION AUTHORITY.—Due to the extraor-
5 dinary wildfire threat present on National Forest System
6 lands in the Forest Service Regions, the Regional Forester
7 for a Forest Service Region may exempt a Forest Service
8 project described in subsection (b) from any provision of
9 law including, but not limited to, the National Environ-
10 mental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and
11 the National Forest Management Act (16 U.S.C. 1601 et
12 seq.), and the project shall proceed immediately and to
13 completion. In addition, the project shall not be subject
14 to the notice, comment, and appeal requirements of sec-
15 tion 322 of Public Law 102–381 (commonly known as the
16 Appeals Reform Act; 16 U.S.C. 1612 note) or to judicial
17 review by any court of the United States.

18 (b) COVERED PROJECTS.—A Forest Service project
19 referred to in subsection (a) is a project that involves the
20 removal of trees on National Forest System lands man-
21 aged by the Regional Forester that the Regional Forester
22 finds, on the basis of the best scientific information
23 available—

24 (1) are located in an area with a high fuel load,
25 and a significant possibility exists that a crown fire

1 could occur which would cause extreme harm to the
2 forest ecosystem; or

3 (2) are dead or severely damaged from fire.

4 (c) CERTIFICATION.—The Regional Forester shall
5 certify the findings made under subsection (b) to the Chief
6 of the Forest Service and the Congress.

7 **SEC. 4. CONSTITUTIONAL AUTHORITY.**

8 The Constitutional authority on which this Act rests
9 is the authority of Congress to make all laws which shall
10 be necessary and proper, as enumerated in Article I, Sec-
11 tion 8 of the United States Constitution, as well as the
12 authority of Congress to make all needful rules and regu-
13 lations respecting the territory or other property belonging
14 to the United States, as enumerated in Article IV, Section
15 3 of the United States Constitution.

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